

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARTIN HALL,

Defendant-Appellant.

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UNPUBLISHED

December 19, 1997

No. 195567

Recorder's Court

LC No. 95-001717

Before: Holbrook, Jr., P.J., and Young and J.M. Batzer\*, JJ.

PER CURIAM.

Defendant was convicted following a jury trial of possession of 650 grams or more of cocaine, MCL 333.7403(2)(a)(i); MSA 14.15(7403)(2)(a)(i). He was sentenced to a term of life imprisonment. Defendant now appeals as of right. We affirm his conviction, but remand for correction of the judgment of sentence to reflect that defendant will become eligible for parole consideration.

Defendant first argues that he was denied a fair trial when the trial court criticized defense counsel, demeaned defense attempts to test the credibility of a key prosecution witness, interfered with defense counsel's opening statement and examination of witnesses, and otherwise demonstrated bias in favor of the prosecution. We must determine whether the trial court's comments and questions unjustifiably aroused suspicion in the mind of the jury regarding a witness' credibility and whether partiality quite possibly could have influenced the jury to defendant's detriment. *People v Cheeks*, 216 Mich App 470, 480; 549 NW2d 584 (1996).

MRE 614(b) allows the trial court to call and interrogate witnesses. In addition, the trial court is required to control the proceedings before it to ensure that the jury is presented with relevant evidence. MCL 768.29; MSA 28.1052. However, the trial court is required to exercise caution and restraint "to ensure that its questions are not intimidating, argumentative, prejudicial, unfair, or partial." *Cheeks*, *supra*, 216 Mich App at 480. Similarly, the Code of Judicial Conduct requires that a judge be patient, dignified and courteous to the litigants and lawyers subject to the judge's control. See Code of Judicial Conduct, Canon 3, § (A)(3). Defense counsel should be

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\* Circuit judge, sitting on the Court of Appeals by assignment.

treated with the consideration due an officer of the court. *People v Wigfall*, 160 Mich App 765, 775; 408 NW2d 551 (1987). However, when reviewing whether the trial court engaged in misconduct, it is important to bear in mind that judges are human and that they are not devoid of opinion or emotion. *People v McIntosh*, 62 Mich App 422, 438-439; 234 NW2d 157 (1975), aff'd in part and rev'd in part on other grounds 400 Mich 1 (1977).

In the present case, the trial court did inject itself into the proceedings on several occasions. However, the court never belittled or demeaned defense counsel, expressed to the jury that it believed that defendant was guilty, or otherwise demonstrated bias in favor of the prosecution. Having thoroughly reviewed the alleged instances of misconduct, we conclude that none of the trial court's remarks deprived defendant of a fair trial by unduly influencing the jury. *People v Paquette*, 214 Mich App 336, 340-341; 543 NW2d 342 (1995).

Defendant also argues that the trial court made a clerical mistake when it entered a judgment of sentence reflecting that defendant is to serve a sentence of life in prison without the possibility of parole. We agree. The Supreme Court struck down as unconstitutional that portion of MCL 791.234(4); MSA 28.2304(4) denying parole consideration for defendants convicted, as in this case, of simple possession of 650 grams or more of cocaine. *People v Bullock*, 440 Mich 15, 40; 485 NW2d 866 (1992). While it is clear from the trial court's statements at defendant's sentencing hearing that defendant was being sentenced to statutory rather than natural life, it is necessary to remand this matter to the trial court for correction of the judgment of sentence. MCR 7.208(A); MCR 2.612(A).

Defendant's conviction is affirmed, but the case is remanded for correction of the judgment of sentence to reflect that defendant will become eligible for parole consideration. We do not retain jurisdiction.

/s/ Donald E. Holbrook

/s/ Robert P. Young, Jr.

/s/ James M. Batzer